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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/699,770	11/04/2003	Todd C. Warden	YOR920030566 (00280761AA)	5896
30743 7590 08/01/2008 WHITHAM, CURTIS & CHRISTOFFERSON & COOK, P.C. 11491 SUNSET HILLS ROAD SUITE 340 RESTON, VA 20190				
EXAMINER NGUYEN, THUY-VI THI				
ART UNIT 3689		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/699,770

Applicant(s)

WERDEN, TODD C.

Examiner

THUY VI NGUYEN

Art Unit

3689

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 May 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This action is in response to applicant's amendment received on May, 06, 2008 wherein: claims 1-11 are currently pending.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 1-11** are rejected under 35 U.S.C. 103(a) as being unpatentable over Wargon (US 2004/0153283) in view of Amarson et al. (US Patent No. 5,184,733) (hereinafter referred to as Amarson).

Regarding claim 1, Wargon discloses an apparatus to determine prices of products (items, objects) priced by weight comprising:

a database of lookup tables of densities of a plurality of products; [...*density factor for particular type of item is obtained electronically from a look-up-table*; par. 0011]; and

a computer terminal which receives product type and volume of the product information and accesses the database to determine a density for the product, the computer terminal computing a weight of the product as a function of volume and density of the product and then computing a price of the product as a function of

price/weight ratio [...*microprocessor receives the signal and calculate the cumulative volume of the item; look up-table for the density factor of the item; volume calculation is converted into numeric weight values*; pars 0010, 0011, 0012].

Wargon fails to disclose a camera for carrying out the function/steps of the claimed invention.

In another similar system and method for determining an object (item or product) and its associated features, AMARSON et al discloses a camera for detecting and identifying a product by type [...*camera (1) records the objects; (col. 1, lines 64-68; col. 2, lines 25-33; and figure 1)*]; means for determining a volume of the product based on image information from the camera [...*data of the recorded image is transmitted from the camera to microprocessor (9) to analyzes the images and determines the weight and volume of the object*; col. 2, lines 1-7 and lines 43-45; figure 1]. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate into the method and system of determine the volume, density and price for the product of Wargon with the calculating volume based on the image of product using a camera as taught in Arnarson to provide a computation of weight (or cost) more simpler, accurate and quicker (Arnarson; col. 1, lines 60-63).

Regarding claim 2, Wagon discloses the apparatus is part of a checkout station in a retail store [par. 0005 and figure 1].

Regarding claim 3, Wargon discloses a display connected to the computer which displays the calculated price of the product [...*display screen (30)*; par. 0093 and figure1].

Regarding claim 4, Wargon discloses wherein the computer generates a running total of prices for a plurality of products as part of a single transaction and displays the running total on the display [...*cumulative volume calculations are converted into numeric weight values (prices)*; par. 0011 and figure 1 (display 30)].

Regarding claim 5, Wargon discloses further comprising a connected to the computer which prints the running total [...*printer devices (188)*; par. 0172 and figure 1B].

Regarding claim 6, Wargon discloses computer terminal categorizes the product within one of a plurality of weight ranges, the price of the product being a function of the weight ranges [par. 0011].

Regarding claim 7 Wargon discloses a method of determining a product weight and calculating price comprising the steps of:

accessing a database of densities of a plurality of products and determining a density for the detected and identified product [...*memory stored density factor for the particular type of item; density of each type of item is recorded in the signal processor 300 memory*; par. 0011; par. 0134];

calculating a weight of the product as a function of volume and density of the product [...*volume calculations may be converted into numeric weight values*; par. 0011; par. 0134].

calculating a price of the product as a function of the calculated weight and price/weight ratio [...*cost for each segment may also be calculated by multiplying*

the segment weight value by the input cost per unit weight value; par. 0011 and par. 0093; par. 0134].

Wargon fails to disclose a camera for carrying out the function/steps of the claimed invention.

In another similar system and method for determining an object (item or product) and its associated features, Arnarson discloses detecting a product with a camera [...*camera (1) records the objects; (col. 1, lines 64-68; col. 2, lines 25-33 and figure 1)]; identifying the product by type [...It is considered that image that camera is captured by it self is identified the type of product; lines col. 2, lines 25-32; col. 3, lines 1-4; figure 1]; determining a volume of the product from an image of the product [...data of the recorded image is transmitted from the camera (9) to analyzes the images and determines the weight and volume of the object to microprocessor; col. 2, lines 1-7 and lines 43-45; figure 1].*

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate into the method and system of determine the volume, density and price for the product of Wargon with the calculating volume based on the image of product using a camera as taught in Arnarson to provide a computation of weight (or cost) more simpler, accurate and quicker (Arnarson; col. 1, lines 60-63).

Regarding claim 8, Wargon discloses further comprising the step of displaying the calculated price of the product [...*display screen (30); par. 0093 and figure 1].*

Regarding claim 9, Wargon discloses further comprising the step of generating a running total of prices for a plurality of products as part of a single transaction

[...*cumulative volume calculations are converted into numeric weight values (prices)*; par. 0011 and figure 1 (display 30)].

Regarding claim 10, Wargon discloses further comprising the step of printing the running total upon completing of the transaction [...*printer devices (188)*; par. 0172 and figure 1B].

Regarding claim 11, Wargon discloses further comprising the step of categorizing the product within one of a plurality of weight ranges, the price of the product being a function of the weight ranges [par. 0011].

Response to Arguments

4. Applicant's arguments filed 5/6/08 have been fully considered but they are not persuasive.

1. Applicant's comment that WARGON fails to disclose a camera is noted, however, this feature is taught in the 2nd reference or Arnarson. As for the notion of the camera identifies the product by type, this is not positively claimed in the method claim 7 and furthermore, this is inherently in the teachings of Arnarson when a camera is used for identifying the product, as taught on col. 2, line 60 to col. 3, line 23 "...*The weight of the fish is then obtained by multiplying volume (V) by the specific weight density of the type of fish being analyzed...*".

2. In response to applicant's argument on page 7, first paragraph, that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a conveyor is not necessary, and manual

placement of the object suffices) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

3. As for applicant's comment that on page 7, 3rd paragraph, that present claimed invention is designed to include a step of type identification is noted, however, this is taught in the combination of Wargon/Arnarson as cited in paragraph 1 above.

4. In response to applicant's argument that the teachings of Wargon/Arnarson are not combinable, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). AMARSON et al discloses the calculating volume based on the image of product using a camera to provide a computation of weight (or cost) more simpler accurate and quicker (col. 1, lines 60-63).

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thuy-Vi Nguyen whose telephone number is 571-270-1614. The examiner can normally be reached on Monday through Thursday from 8:30 A.M to 6:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janice Mooneyham can be reached on 571-272-6805. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

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USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/T. N./

Examiner, Art Unit 3689

/Dennis Ruhl/

Primary Examiner, Art Unit 3689